

# Exhibit 48

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1  
2 THE COURT: She said you would be here  
3 between 2:10 and 2:15.

4 MR. MOORE: I was delayed by the traffic.

5 THE COURT: I'm telling you the next time you  
6 come in here late, come with a check for \$250;  
7 that's what it's going to cost you.

8 MR. MOORE: It's not intentionally done; it  
9 was due to forces beyond my control.

10 THE COURT: As you're probably aware at the  
11 moment, the trial date has been adjourned because  
12 of information that was brought to the attention  
13 of the district attorney through the Police  
14 Department and the dates have been changed.

15 You want to place on the record as Mr. Moore  
16 can know?

17 MISS LEDGERA: A copy of the letter that was  
18 sent to the court was sent to Mr. Moore on  
19 Thursday of last week indicating that a semen  
20 stain had been found on a garment of clothing  
21 belonging to the female jogger and that the People  
22 were requesting an adjournment in order to perform  
23 DNA analysis on that sustain.

24 A copy of the serology report that documents  
25 the finding of that stain and the item on which it

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was found has been sent to all counsel and a copy has been filed with the court.

The court granted the People's request for an adjournment and I believe the date set was May 21st as a control date to see if we have any information that results from the F.B.I. at that time.

MR. MOORE: The application was granted by the court?

THE COURT: Yes it was, May 21st.

MR. MOORE: I was not here.

THE COURT: I'm aware of that.

MR. MOORE: I just want to state Your Honor my very strong objection to this adjournment that was granted to the People and the permission that Your Honor has given to the district attorney to conduct its test.

The district attorney has had this vouchered clothing in their possession for over a year. They have conducted a series of DNA test, four, and the implication of that was that they had sent for the DNA analysis every item of clothing that they deemed relevant and applicable to these circumstances.

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SUPREME COURT NEW YORK COUNTY  
TRIAL TERM PART 59

THE PEOPLE OF THE STATE OF NEW YORK : INDICTMENT NOS:  
 : 4762/89  
-against- : 2790/90  
 : CHARGE:  
YUSEF SALAMAH, DAYMON SANTANA, STEVE : Att. Murder :  
LOPEZ, ANTHONIO CRAY, HARVEY WISL, :  
KEVIN RICHARDSON & MICHAEL BRISCO, :  
Defendants :  
 : Proceedings

111 Centre Street  
New York, N.Y. 10013

April 2, 1990

BEFORE:

HONORABLE THOMAS S. GALLICAN,  
JUSTICE OF THE SUPREME COURT

APPEARANCES:

For the People: ROBERT M. MORGENTHAU, ESQ.,  
District Attorney, New York County

BY: ELIZABETH LEDERER & ARTHUR CLENNIS, ESQs.,  
Assistant District Attorneys

For the Defendants:

FORREST I. RUBIN, ESQ., Atty. for Yusef Salamah	MICHAEL JOSEPH, ESQ., Atty. for Anthonio Cray
ANTHONY PIVVIA, ESQ., Atty. for Daymon Santana	ROBERT FILLER, ESQ., Atty. for Kevin Richardson
JOSEPH BERNAL, ESQ., Atty. for Steve Lopez	ANNA L. FORTIER, RPH Senior Court Reporter

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COURT CLERK: Indictment Number 4752 of '89,  
Yusef Salameh, Raymond Santana, Steve Lopez, Antron  
Mc Gray, Karey Wise, Kevin Richardson and Michael  
Prisco; also Indictment Number 2790 of '89,  
Michael Prisco.

MR. BURNAS: Robert Burnas for Yusef Salameh.

MR. RIVERO: Peter Rivero for Raymond  
Santana.

MR. JOSEPH: Richard Joseph for Antron Mc  
Gray.

MR. DILLER: Howard Diller for Kevin  
Richardson.

MR. BERMAN: Jesse Berman for Steve Lopez.

MISS LEDERER: Elizabeth Lederer for the  
People.

MR. CLEMENTS: Arthur Clements for the  
People.

THE COURT: All right. Before we start, I  
have the usual application for permission to  
conduct audio visual coverage by the press and  
counsel, as always, have an opportunity to accept  
or reject the offer of the press to make the  
proceedings public.

MR. BURNAS: We take the same position we

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previously took.

MR. BURNS: That is on behalf of all of the defendants.

THE COURT: And I will also, and the order will be signed.

For the record, obviously there are two other defendants who are not here. They are actually available; they're on the job. Their attorneys are not here.

Mr. Flood has called and is on trial in this court and cannot be here at the moment; he can't be two places at the same time. We'll call that case later.

Mr. Hoern was advised to be here, has not arrived, which is not unusual, and his client is present and so we'll proceed with those defendants who are before the court and we'll handle the other two cases subsequently.

Now I have received, and I might just add for the record, Mr. Sereno was late but he had advised the court he had an engagement in Brooklyn and we were aware of that and I appreciate that courtesy.

I have received a letter from the district attorney, copies of which were sent to counsel

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indicating that they are not ready to proceed because of certain clothing which has been vouchered which had previously been vouchered which now -- well, I'll read the letter.

"Dear Justice Galligan: Upon re-examination of an article of clothing vouchered in connection with the case, a semen sample was discovered.

Because the article of clothing belonged to the female jogger, it is necessary to submit this stain for DNA testing.

Therefore, the People respectfully request an adjournment of the April 16, 1990 trial date in order that this test may be performed." The letter is signed by Elizabeth J. Lederer, Assistant District Attorney.

I must say that obviously, I'm very distressed. The fact that a year after an incident occurs and a year after an exhibit has been in the possession of the Police Department, that on the eve of trial, all of a sudden it has to be tested, it's something that seems to me could have been done a long time ago, so I'll be interested to hear from the district attorney why that's so.

MISS LEDERER: Your Honor, I cannot explain

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2 way the stain was not previously discovered. On  
3 Wednesday, March 28th, in anticipation for trial,  
4 the property was examined in order to be ready for  
5 the April 16th trial date and at that time, the  
6 stain was discovered.

7 I'm not a foreologist and I can't explain to  
8 the court why the Police Department did not find  
9 it upon their initial evaluation and review of  
10 this piece of evidence.

11 MS. STEVEN: Judge, is it proper for me to  
12 inquire first as to which item of clothing the  
13 letter is talking about because the letter we  
14 received is silent as to which item of clothing  
15 and it would be helpful if we could identify it.

16 THE COURT: What item of clothing?

17 MISS LEDGER: It was a sock belonging to the  
18 female jogger.

19 MR. PERAZA: And just for the purpose of this  
20 discussion, obviously on behalf of my client, he  
21 is not among the three who are scheduled to go to  
22 trial on the 16th, but I appreciate the court  
23 having us be here today because it does impact.

24 Since the court has already said it's not  
25 going to sever my client to the extent of sending

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2 it out to another judge to start preparing for a  
3 trial, since we have to await this other trial,  
4 the adjourning of the other trial affects my  
5 client's rights.

6 I would like to know how much time the People  
7 are asking for since the letter is silent on that  
8 question. They just use the word "adjournment"  
9 and they don't say how long and I remember the  
10 last DNA work they did took five months until we  
11 got an answer.

12 THE COURT: That's a fair question.

13 MISS LEDERER: In anticipation of that ques-  
14 tion, I spoke with both the agent who has done the  
15 testing thus far in this case and I also contacted  
16 the head of the DNA lab from the F.B.I., Mr. John  
17 Hicks. I explained to him the results of this  
18 re-examination and I explained to him that we had  
19 a trial date set for April 16th and that both the  
20 court and the attorneys on both sides would be  
21 anxious to proceed as quickly as possible.

22 I asked him to give me a date that would be a  
23 reliable date for when the results of the test  
24 would be available. I was advised it would be  
25 eight to ten weeks. There is an outside possi-

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2 ability that the earliest would be six weeks but I  
3 asked Mr. Hicks to give me a date that would  
4 fairly state to the court what range of time we're  
5 talking about.

6 THE COURT: Well, I frankly still have great  
7 difficulty in accepting -- it seems to me almost  
8 negligent on the part of the police or whoever is  
9 in charge of the lab to have an item a year later  
10 and find out it may be valuable in terms of  
11 evidence.

12 Well -- presumably if there are positive  
13 results, we're going to have additional hearings.

14 They said the earliest would be six weeks?

15 MISS LEDERER: It is conceivable that we  
16 could have results as early as six weeks. I asked  
17 for a date so that we would not be in a position  
18 of setting a firm date for trial and then coming  
19 in to inform the court the tests were not ready,  
20 and Mr. Hicks told me eight to ten weeks was a  
21 more reliable estimate, but it depends on the  
22 process of the testing, and they cannot defini-  
23 tively state that it would be a minimum of six  
24 weeks.

25 If the court wishes to set a date, obviously

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2 we're ready to proceed as soon as the results are  
3 known and if they could be known in six weeks, we  
4 would be ready at that time, but I thought it only  
5 fair to apprise the court of a -- exactly what  
6 I've been informed by the DNA lab.

7 THE COURT: I will put it on for six weeks or  
8 a control date at least.

9 MR. RIVERA: Your Honor, can we be heard on  
10 the People's request for an adjournment?

11 THE COURT: Sure.

12 MR. RIVERA: As the court knows, my client  
13 has been in jail for the last year on this matter.

14 THE COURT: It should also be noted that you  
15 didn't even make a bail application until December  
16 on his behalf.

17 MR. RIVERA: And the judge set bail in the  
18 amount of \$125,000 and my client has still been in  
19 because he has not been able to make the bail.  
20 The bail would have been academic at that point in  
21 time, Your Honor.

22 If the court is willing to grant the People's  
23 adjournment, I would ask the court to reconsider  
24 the question of bail as to my client.

25 At this juncture, on behalf of my client, I'm

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2 opposed to it. This was evidence that the People  
3 had in their possession as the court indicated.  
4 It was their negligence and their inadvertence  
5 that delayed the uncovering of this evidence for  
6 approximately one year, and on behalf of Raymond  
7 Santana, I would oppose the People's adjournment.

8 THE COURT: Anybody else want to be heard?

9 MR. BERNAN: Judge, I'm just -- just to  
10 finish up what I said before, I now understand  
11 that this purported stain is on the sock.

12 There is a lab report that was given to us  
13 months back that says on April 20, 1989, a detec-  
14 tive named Honeyman submitted two socks, two socks  
15 for analysis. One is called both, 2-5 and 8-10  
16 and the other one is called 3-5 and 8-11.

17 Can I relate this to subsequent reports? Can  
18 the People tell us which sock this is?

19 MISS LEDERER: Your Honor, I have directed  
20 the serologist who found the stain to prepare a  
21 serology report and that will be served on each of  
22 the attorneys this week.

23 THE COURT: He's asking which of two socks,  
24 8-10 or 8-11?

25 MISS LEDERER: I don't know exactly which

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2 label and I'm reluctant to hazard a guess. The  
3 report will be served this week.

4 MR. BERMAN: Insofar as it might aid the  
5 court in deciding whether to grant the People's  
6 application, this report doesn't have any other  
7 identifying number except the case number I guess,  
8 is a report ultimately dated 12-8-89 reporting  
9 back on the results of what was submitted on  
10 4-20-89 and without getting too much into it, the  
11 comparisons were made apparently with these two  
12 socks with various specimens submitted from each  
13 of the defendants in this case, and I'm at a loss  
14 to understand how they could compare whatever  
15 serological stains of value were on the socks way  
16 back last year and come up with nothing and now  
17 look at the same sock and find a stain that wasn't  
18 there between last April and last December.

19 I don't doubt everybody's integrity here but  
20 maybe when the court wants to decide this motion  
21 which is going to put things off for at least two  
22 months or so, if you want to take a look at this  
23 report, we'll gladly lend it to the court.

24 It looks like they did a lab report on this  
25 last year and didn't see a stain and it's shocking

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and I'm sorry judge.

THE COURT: I'm sorry also and I'm also shocked, but the fact that they did not discover a stain earlier -- I'm not a serologist -- does not foreclose their finding something subsequently.

I will allow them to make their test and I will grant the adjournment reluctantly but I think necessarily, and I'll put the case on for May 14th which is six weeks.

Obviously, based upon what the district attorney has indicated, six to eight weeks, eight to ten weeks, the earliest possible would be six so I'll put it on for the earliest possible date and find out where we are.

MR. BERMAN: That happens to be a bad -- that week I will not be available judge. I know it's just for a conference, it's not a trial date but the Friday before or the week after.

THE COURT: How about the Monday after?

MR. BERMAN: Absolutely satisfactory.

THE COURT: May 21st.

MR. DILLER: Is this for all of the defendants Your Honor?

THE COURT: This will be for all of the

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2 defendants because we'll have to establish -- it  
3 may alter perhaps the trial order, I don't know.

4 MR. BERMAN: This is for a status conference  
5 rather than a firm trial date?

6 THE COURT: Exactly, because presumably, if  
7 it's a positive, there may be additional proceed-  
8 ings.

9 MR. BERMAN: May I also ask that the court  
10 adjudicate this time not excludable time?

11 THE COURT: When the time arrives to discuss  
12 30,30 time counsel, you can make your application.

13 MR. BERMAN: I just always --

14 THE COURT: It's obvious the people are  
15 making this request at this particular point in  
16 time. What impact that is going to have ulti-  
17 mately we'll wait and see. We'll await that time.

18 MR. BERMAN: I just wanted to capture your  
19 state of shock now while you're in that state of  
20 shock and get you to rule.

21 THE COURT: You can also buy the record.

22 MISS LEDERER: Your Honor, in response to a  
23 motion and an application from Mr. Joseph on  
24 behalf of Antron Mc Gray, I am turning over at  
25 this time, certain F.B.I. reports including copies

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of 16 auto reds and the F.B.I. notes and materials that he has requested.

THE COURT: Your application is still on the floor.

MR. RIVERA: In view of the fact the court has adjourned this case to May 21st, I would renew my application to reduce the bail of Mr. Raymond Santana. He's the one most prejudiced by this adjournment.

We were ready to start trial on April 16th and the court is quite familiar with all the facts and circumstances of this case. I would just renew my application.

My client is able to make bail in the amount of \$10,000.

THE COURT: The bail conditions will remain the same, \$25,000, as I said. This defendant, your client, you threw the ball over here. Your client was in jail from the time he was arrested until December, and there was no bail application made of any kind, so whatever efforts could have been made to obtain bail for your client from April to December were totally lost. That's eight months.

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